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K.W., Appellant)	
)	
and)	Docket No. 17-0205
)	Issued: June 12, 2017
U.S. POSTAL SERVICE, PROCESSING & DISTRUBUTION CENTER, Brooklyn, NY, Employer)	
)	

Case Submitted on the Record

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 8, 2016 appellant, through counsel, filed a timely appeal from an August 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant sustained an injury causally related to a July 8, 2014 employment incident.

FACTUAL HISTORY

On August 4, 2014 appellant, then a 49-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 8, 2014 she experienced pain in her middle and lower back, neck, and right shoulder radiating into her right arm and leg while casing mail. She stopped work on July 8, 2014 and did not return.

Appellant received treatment at the emergency room on July 8, 2014 from a physician assistant for upper back and right shoulder strain.

In a report dated July 10, 2014, Dr. Maxim Tyorkin, a Board-certified orthopedic surgeon, discussed appellant's complaints of radiating neck and back pain which began at work on July 8, 2014. He noted a history of previous back and bilateral shoulder injuries with surgery on the left shoulder in 2005 and the right shoulder in 2010. Dr. Tyorkin diagnosed cervical and lumbar radiculopathy and found that appellant was totally disabled. He further advised that the referenced "accident" was the "competent producing cause of [the] injuries sustained...." Dr. Tyorkin also completed an authorization for examination and/or treatment (Form CA-16) on July 10, 2014. He diagnosed cervical and lumbar radiculopathy, checked a box marked "yes" that the condition was caused or aggravated by the employment activity, and described the condition as sharp pain in the back, neck, and shoulders radiating into the hand.

By letter dated July 9, 2014, the employing establishment controverted the claim, noting that appellant performed light duty. Appellant returned to work on June 10, 2014 after being out of work 10 years due to an employment injury. The employing establishment noted that the volume of mail was light and advised that she spent time away from her work duties.

In reports dated July and August 2014, a chiropractor indicated that he treated appellant for back pain.

By letter dated August 21, 2014, OWCP requested additional factual and medical information from appellant, including a detailed report from an attending physician addressing the causal relationship between any diagnosed condition and the employment incident. It further advised her of the limitations of chiropractic reports under FECA.

Appellant submitted additional medical evidence. In a report dated July 31, 2014, Dr. Tyorkin evaluated her for "injuries sustained in a work-related accident on July 8, 2014 when [appellant] injured her neck and back while working for the [employing establishment] as a mail processing clerk and felt pain while sorting mail." He diagnosed cervical and lumbar radiculopathy, opined that appellant was totally disabled, and found that the identified incident was the cause of her injuries and need for treatment.

Dr. Albert J. Ciancimino, a gastroenterologist, in progress reports dated July and August 2014, diagnosed derangement of the shoulder joint, pain in the upper arm joint, and neck

sprain. He indicated the date of injury as July 8, 2014 and checked a box marked “yes” that the described incident caused the injury. Dr. Ciancimino opined that appellant was totally disabled.

In an initial report dated August 5, 2014, Dr. Jess Collins, a Board-certified neurologist, obtained a history of appellant receiving treatment in the emergency room on July 8, 2014 after experiencing pain sorting mail. He discussed her complaints of neck and low back pain radiating into the right leg since the incident. Dr. Collins diagnosed cervical and lumbar radiculitis and noted that a lumbar spine x-ray revealed a rotary scoliotic deformity. He found that appellant was totally disabled and related that, “[w]ithin a reasonable degree of medical certainty, the accident of July 8, 2014 [was] the substantial cause of [appellant’s] condition.”

A magnetic resonance imaging (MRI) scan study of the cervical spine, obtained on August 12, 2014, revealed a disc herniation at C5-6 with moderate impingement on the anterior thecal sac and a disc bulge at C2-3 moderately impacting the anterior thecal sac.

Appellant, in a September 15, 2014 statement, related that she had resumed work on June 10, 2014 after being off work on compensation for 10 years. She worked continually from July 8, 2014 until she stopped to take pain medication. Appellant noted that, after she resumed work, she informed management that she had pain from prior injuries, but she did not previously have any pain in her middle back and neck until July 8, 2014.

By decision dated September 23, 2014, OWCP denied appellant’s claim as the medical evidence was insufficient to establish an injury causally related to the accepted July 8, 2014 employment incident. It found that the medical evidence failed to contain a reasoned medical opinion attributing a diagnosed condition to the work incident.

In a September 9, 2014 progress report, received by OWCP on October 20, 2014, Dr. Collins diagnosed cervical radiculitis due to a disc herniation at C5-6 and disc bulge at C2-3 by MRI scan study and lumbar radiculitis.³ He advised that the July 8, 2014 accident was the “substantial cause of [appellant’s] condition.”

In a September 18, 2014 attending physician’s report (Form CA-20), Dr. Douglas Schottenstein, a Board-certified neurologist, diagnosed cervical and lumbar radiculitis and checked a box marked “yes” that the condition was caused or aggravated by the described history of appellant experiencing back and neck radiculopathy after an “injury while working.”

Dr. Robert W. Sandell, a chiropractor, provided September 24 and 30, 2014 form reports, diagnosing neck, thoracic, and lumbar sprain/strains, indicating that the history of injury was a competent cause of the condition, and finding appellant totally disabled.

On October 8, 2014 counsel requested a telephone hearing before an OWCP hearing representative. She submitted September and October 2014 chiropractic notes confirming appellant’s treatment.

³ Dr. Collins submitted a similar progress report dated October 21, 2014.

In an August 27, 2014 initial evaluation, received by OWCP on January 12, 2015, Dr. Ciancimino evaluated appellant for a July 8, 2014 work injury that occurred when she sustained neck and back pain radiating into the extremities while casing mail. He diagnosed cervical and lumbosacral derangement with radiculopathy and provided treatment options. Dr. Ciancimino opined that appellant was totally disabled and that the “above-referenced accident is the substantial cause of [appellant’s] condition and the need for further treatment.”⁴

Dr. Collins, in a report dated December 16, 2014, advised that he had provided pain management treatment for appellant beginning August 5, 2014 for a July 8, 2014 injury. He noted that on July 8, 2014 she experienced pain sorting mail and had continued symptoms of neck pain radiating to the upper extremities and back pain radiating to the lower extremities. Dr. Collins reviewed the results of MRI scan studies, finding a cervical disc herniation at C5-6 and disc bulge at C2-3 and the lumbar MRI scan study showing disc bulging at L4-5 and L5-S1 impressing the anterior thecal sac at these levels. He related:

“This pain from the condition has been ongoing since the accident, and has persisted every day without remission. The neck and low back injury likely resulted from the incident in which [appellant] was working as a mail processing clerk. Within a reasonable degree of medical certainty, the accident of July 8, 2014 is the substantial cause of [her] condition.”

Dr. Michael Neely, an osteopath and Board-certified physiatrist, evaluated appellant on January 13, February 24, and April 7, 2015 for neck pain and low back pain radiating to the extremities.⁵ He diagnosed cervical radiculitis due to a disc herniation at C5-6 and disc bulge at C2-3 and lumbar radiculitis due to a disc bulge. Dr. Neely attributed the diagnosed conditions to the July 8, 2014 injury and found that appellant was totally disabled.

At the hearing, held on May 6, 2015, OWCP’s hearing representative noted that appellant had a history of a prior work injury to her neck, left shoulder, and lumbosacral spine under OWCP File No. xxxxxx590 and right shoulder sprain and impingement under File No. xxxxxx255. Appellant related that after being off work for 10 years due to her shoulder injury she returned to work casing mail at a reduced schedule. She used a chair because she continued to have symptoms from her back sprain.

In progress reports dated May 19 and June 30, 2015, Dr. Neely diagnosed cervical radiculitis due to a disc herniation, and bulge and lumbar radiculitis due to a disc bulge. He found that appellant was totally disabled and attributed the diagnosed conditions to the July 8, 2014 incident.

By decision dated July 1, 2015, OWCP’s hearing representative affirmed the September 23, 2014 decision.

⁴ Dr. Ciancimino provided similar findings in an October 8, 2014 progress report.

⁵ On February 16, 2015 Dr. Schottenstein noted that appellant experienced pain on July 8, 2014 sorting mail and explained the benefits she received from medication and treatment.

Dr. Schottenstein, in progress reports dated September 2015 through April 2016, provided examination findings and diagnosed cervical and lumbar radiculitis.⁶ He determined that appellant was totally disabled and that the July 8, 2014 accident caused her condition.

In a report dated May 9, 2016, Dr. Schottenstein advised that he was providing pain management to appellant for lumbar and cervical radiculitis. He related, “[Appellant] was involved in an accident on July 8, 2014 when she was working as a mail processing clerk and repetitively utilizing a pulling motion to lift trays and sort mail, when she felt a sharp pain in her neck.” Dr. Schottenstein described his treatment and the objective studies. He opined, “Within a certain degree of medical certainty, [appellant’s] exacerbated neck and low back pain are directly related to the injury sustained while repetitively lifting and sorting mail as a mail processing clerk. [She] has suffered persisting neck and low back pain every day without remission since the date of accident.” Dr. Schottenstein concluded that appellant injured her back and neck lifting trays and mail sorting and thus her pain was “directly related to the initial injury....”

On May 16, 2016 appellant, through counsel, requested reconsideration.

Dr. Schottenstein provided a progress report, dated May 31, 2016, describing his treatment of appellant, diagnosing cervical and lumbar radiculitis, and finding that the July 8, 2014 incident was the cause of her condition.

In a decision dated August 12, 2016, OWCP denied modification of the July 1, 2015 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁹ Second, the

⁶ Electrodiagnostic testing performed on January 13, 2016 showed positive findings at the right and left S1 sural nerve and bilateral L5 peroneal nerve. Testing performed June 8, 2016 revealed positive findings at the left C2 occipital nerve and right C7 radial medial branch nerve.

⁷ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁸ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.¹⁰ An employee may establish that the employment incident occurred as alleged, but fail to show that her disability and/or condition relates to the employment incident.¹¹

ANALYSIS

Appellant alleged that she sustained an injury to her middle and lower back, neck, and right shoulder causing pain down her right arm and leg on July 8, 2014 after casing mail. There is no dispute that on July 8, 2014 she was casing mail at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this employment incident.

The Board finds that appellant has not established that the July 8, 2014 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.¹²

On May 9, 2016 Dr. Schottenstein noted that on July 8, 2014 appellant felt a sharp neck pain after using repetitive movements lifting trays and sorting mail. He diagnosed lumbar and cervical radiculitis and attributed her symptoms to her repetitive injury lifting and sorting mail and noted that she had experienced pain daily since the accident. In September 2015 through May 2016 progress reports, Dr. Schottenstein diagnosed lumbar and cervical radiculitis and indicated that the July 8, 2014 incident caused appellant's condition. While he related that appellant had pain after repetitively sorting mail, he did not explain the mechanism by which the repetitive work duties caused a disc injury such that she sustained radiculitis. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ Dr. Schottenstein, in a form report dated September 18, 2014, noted diagnoses and checked a box marked "yes" that the condition was caused or aggravated by employment. However, a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹⁴

On August 5, 2014 Dr. Collins reviewed appellant's history of receiving treatment at the emergency room on July 8, 2014 after experiencing pain sorting mail. He diagnosed lumbar and cervical radiculitis and found that the July 8, 2014 employment incident caused her condition. Dr. Collins provided similar findings in a report dated September 9, 2014. On December 16,

¹⁰ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *Id.*

¹² *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹³ *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁴ *See D.B.*, Docket No. 16-0798 (issued December 2, 2016).

2014 he noted that appellant had neck and back pain radiating into the extremities on July 8, 2014 after sorting mail at work. Dr. Collins offered diagnoses, noted that her pain had persisted since the work incident, and attributed her condition to the July 8, 2014 employment incident. He did not, however, support his causal relationship finding with medical rationale. Dr. Collins did not explain why appellant's actions of sorting mail on July 8, 2014 resulted in disc bulges and herniations other than to note that she had experienced pain since that time. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described had caused or contributed to appellant's diagnosed medical condition.¹⁵ The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.¹⁶

On July 10, 2014 Dr. Tyorkin noted that appellant experienced radiating neck and back pain at work on July 8, 2014. He diagnosed cervical and lumbar radiculopathy and found that she was disabled from work. Dr. Tyorkin attributed the diagnoses to the described work injury. He provided a similar report dated July 31, 2014. Dr. Tyorkin, however, did not provide any rationale for his causation finding. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ In a July 10, 2014 Form CA-16, Dr. Tyorkin noted diagnoses and checked a box marked "yes" that the condition was caused or aggravated by work activity.¹⁸ The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁹ Thus, these reports are insufficient to establish the claim.

On August 27, 2014 Dr. Ciancimino obtained a history of a work injury on July 8, 2014 to her neck and back casing mail. He diagnosed derangement of the lumbar and cervical spine with radiculopathy and found that the described accident was the cause of her condition. Dr. Ciancimino also provided form reports in July and August 2014, which noted diagnoses and indicated by a checkmark on the form that the incident described caused the injury. He, however, did not explain how or why appellant's back and neck conditions resulted from the accepted employment incident, and thus his opinion is insufficient to meet her burden of proof.²⁰

¹⁵ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ *D.E.*, 58 ECAB 448 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁷ *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁸ The Board notes that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

¹⁹ *See supra* note 14; *Deborah L. Beatty*, 54 ECAB 3234 (2003).

²⁰ *See H.F.*, Docket No. 16-1603 (issued December 14, 2016); *A.D.*, 58 ECAB 149 (2006).

As noted, a checkmark in response to a question on causation is of diminished probative value without an explanation for the conclusions reached.

Dr. Neely, in reports dated January through April 2015, diagnosed a cervical disc herniation and cervical and lumbar disc bulges, which he determined were causally related to the July 8, 2014 employment incident. He, however, did not provide a well-rationalized medical opinion, based on a complete and accurate medical history, explaining the mechanism by which the diagnosed conditions resulted from the accepted employment incident when casing mail.²¹ Consequently, Dr. Neely's reports are of diminished probative value.

The record also contains records of chiropractic treatment. In reports dated September 24 and 30, 2014, Dr. Sandell, a chiropractor, diagnosed neck, thoracic, and lumbar strains. Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.²² A chiropractor cannot be considered a physician under FECA unless it is established that there is a subluxation as shown by x-ray evidence.²³ Neither Dr. Sandell nor the other chiropractors who treated appellant diagnosed a subluxation by x-ray and thus they are not considered "physicians" under FECA and their reports are of no probative value.²⁴

Appellant also received treatment on July 8, 2014 by a physician assistant. A physician assistant, however, is not considered a "physician" as defined by FECA and thus the report has no probative medical value.²⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury causally related to a July 8, 2014 employment incident.

²¹ See *R.B.*, Docket No. 16-0885 (issued November 25, 2016).

²² 5 U.S.C. § 8101(2); see also *I.C.*, Docket No. 14-1927 (issued February 13, 2015).

²³ 20 C.F.R. § 10.5(bb); see *Mary A. Ceglia*, 55 ECAB 626 (2004).

²⁴ *Isabelle Mitchell*, 55 ECAB 623 (2004).

²⁵ See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board